IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 898 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

YOHEL @ ROCKY ANISAN MACWAN

Versus

STATE OF GUJARAT

Appearance:

MR MM TIRMIZI for Petitioner

Mr. A.J.Desai, APP for respondent No. 1, 2 and 3.

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 03/03/2000

ORAL JUDGEMENT

Heard learned Advocate Mr. M.M. Tirmizi for the petitioner and learned A.P.P. Mr. A.J. Desai for the respondents nos.1, 2 and 3.

1. The petitioner-Yohel alias Rocky Anisan Macwan is under externment for a period of two years from the date of impugned order dated 7-5-1999 passed by the Deputy Police Commissioner, Traffic Branch, Ahmedabad in exercise of powers conferred under Sec.56(b) of the Bombay Police Act, 1951(hereinafter referred to as the "Act"). That the said order has been confirmed by the Dy. Secretary, Home Department(Special), State of Gujarat vide order dated 20-8-1999 in exercise of powers conferred under Sec.60(3) of the Act. The petitioner has challenged both these orders by filing the present petition under Article 226 and 227 of the Constitution.

2. The Assistant Police Commissioner "C" Division, Ahmedabad issued notice dated 12-3-1998 to the petitioner under Section 59 of the Act to show cause why petitioner should not be externed for a period of two years from the area comprised of the City of Ahmedabad within the limit of Police Commissioner and also from the contiguous area comprised within Ahmedabad District Rural, District Gandhinagar, District Kheda and District Mehsana on the ground that in the opinion of the authority there are reasonable grounds for believing that the petitioner is engaged or is about to be engaged in the commission of offences involving force or violence or an offence punishable under Chapter XII, XVI or XVII of the Indian Penal Code or in the abatement of any such offence and witnesses are not willing to come forward to give evidence in public against the petitioner by reason of apprehension on their part as regards the safety of such persons or property. That the notice contained detailed allegations to the effect that the petitioner has been collecting amount by way of installments from the merchants or shop owners situated within the area of Bhalakia Char Rasta , Near Maninagar Railway Crossing by using force with deadly weapons like knife in the company of his accomplice and has also been looting the amount from the shops of such merchants. It is also alleged that the petitioner used to purchase articles from such merchants without making payment and on demand by the merchants, the petitioner has been terrorizing the merchants by using force and violence by showing deadly weapons like knife. That two criminal cases vide CR no.117/94 for the offences made punishable under Secs.365,342, 143, 149 and 392 of the Indian Penal Code and CR no.315/94 for the offences made punishable under Secs.323, 394(B) etc. are registered against the petitioner and they are pending.

3. The petitioner was called upon to submit his explanation, if any, and to produce evidence including

the witnesses within a stipulated period before the officer on a stipulated date with a surety for the amount of Rs.500/- to ensure his presence before the officer.

4. The petitioner has averred and contended in the petition that the petitioner has appeared before the authority and had filed his reply and has also examined witnesses. However, the impugned order dated 7-5-1999 is passed by the Dy. Police Commissioner, Traffic Branch, Ahmedabad City externing the petitioner for a period of two years from the area comprised in the limit of Police Commissioner, City of Ahmedabad as well as from the contiguous area comprising the District of Ahmedabad Rural, District Gandhinagar, District Kheda and District Mehsana.

5. That aggrieved by the said order, the petitioner filed appeal before the Deputy Secretary, Home Department (Special), Sachivalaya, Gandhinagar as provided under Section 60 of the Act. That the appellate authority having heard the parties has rejected the appeal of the petitioner by order dated 20-8-1999, and as such, the petitioner has challenged both the orders in the present proceedings.

6. The impugned orders are challenged on numerous grounds. It has been urged at the Bar on behalf of the petitioner that impugned order of externment suffers from the vice of delayed action after the snapping of live link between the acts alleged to have been committed by the petitioner and the impugned order of externment which has rendered the order invalid. It has been submitted at the Bar on behalf of the petitioner that as per the proceedings the show cause notice was issued on 12-3-1998 Thereafter the last date of proceedings was on 18-12-1998 whereas the impugned order is passed on 7-5-1999 which means there is a delay of five and a half months in taking action against the petitioner for which there is no reasonable explanation either in the impugned order passed by the Dy. Police Commissioner or in the order passed by the appellate authority.

7. Learned A.P.P. Mr. A.J. Desai has vehemently urged that the petitioner cannot be permitted to take advantage of his own wrong. Relying on the record, Mr. Desai has urged that as apparent from the order of the appellate authority, it is the petitioner who has consumed a period of one year and two months by taking various dates for producing witnesses and taking time for prolonged cross-examination of the witness examined by the authority. Despite such fact, the petitioner has

urged before the appellate authority that he was not given sufficient opportunity to defend his case whereby the contention urged on behalf of the petitioner at the Bar not being bonafide should not find favour with the Court.

7.1 It may be noted that Sec.56 of the Act and more particularly, Section 56(b) of the Act contemplate a provision to prevent a person against whom authority has reasonable grounds to believe that such person is engaged or is about to be engaged in the commission of offence and the witnesses are not willing to come forward on account of fear of such person to his person or property. It is significant to note that the Section does not refer to the activity of proposed externee which is a matter of past. In other words, the action of externee is contemplated by the said provision of law on consideration of alleged activity of a person past proximate in time.

8. That in an unreported judgment of the Division Bench of this Court rendered in the matter of VASANTIBEN MUKESHBHAI RANDERI VS. STATE OF GUJARAT AND ORS., Special Criminal Application no.1295/94 decided on 24-1-1995(Coram: K.J. Vaidya & S.D. Dave, JJ.), the Bench having considered the scope, nature and extent of Section 56 of the Act has made the following material and relevant observations:

"The idea behind the concept appears to be a twofold one: firstly send out a man who is engaged in antisocial activities in a particular area, and secondly: save the area and the people residing therein from a person and his illegal activities. The whole idea is to destroy an established network which an under world element has been able to create in a particular locality. This very idea have revolving around the above said provisions of Bombay Police Act, 1951 , makes it obligatory that the whole exercise must be done as expeditiously as possible and within a reasonable time frame."

9. That in the matter of SITABEN M. THAKORE VS. COMMISSIONER OF POLICE, AHMEDABAD CITY AND ANR., Special Criminal Application no.63/96 decided on 10-12-1996 (Coram: N.N. Mathur) having construed the above referred to proposition of law has elaborated the same by observing vide para 10 as under:

" Whosoever may be responsible, whether the externee or the authority, for the delay of the

proceedings, the very purpose of the exercise of powers under Section 56 are frustrated if the same is not exercised within a ` reasonable period', because the grounds which existed for externment which required an immediate action, cannot be said to have continued for a long period."

10. In view of the above stated dicta, it transpires that inquiry under Sec.59 of the Act being of urgent nature should be held as expeditiously as possible and , in particular, only a short notice of three to seven days may be given for submitting the written statement and immediately the date should be fixed for examination of witnesses and once examination of witnesses begin, the same should be continued unless the authority finds the adjournment of the same beyond the following day to be necessary for the reasons to be recorded. It is not necessary to state each and everything, whatever is being stated on behalf of the externee, if in the opinion of the authority the same is not relevant. No adjournment should be granted on flimsy ground that the Advocate of the externee being busy attending social functions or other Court work, and as such, though the time specified by the Division Bench in the matter of Spl.Criminal Application no.1295/94 decided on 24-1-1995 is of six months as a reasonable period to conclude the proceedings under Sec.56 of the Act, the said period appears to be an outer limit in extreme cases. Ofcourse, no definite period of inquiry could be provided as it depends upon the facts and circumstances of each case, however, the principle of law would remain the same. If there is long delay in passing the order of externment after the issuance of show cause notice, the externment authority cannot reasonably come to the conclusion that the acts of the externee are such that in order to prevent him, the externment order is necessary, would become stale and that cannot be the object of the legislature providing a summary remedy as provided under Sec.56 of the Act..

11. In the instant case, though no affidavit on behalf of the respondent is filed, it appears from the order passed by the appellate authority that about 43 adjournments were granted to the petitioner externee by the authority in between 21-3-1998 to 18-12-98 and even on 18-12-1998 as nobody remained present on behalf of the proposed externee, the authority has proceeded to decide ex parte which the authority could have done earlier. The request for adjournments were made not being for sufficient cause, for all the occasion, ought not to have been granted and the proceedings should have been conducted so as to meet with the requirements of law to

complete the inquiry within a reasonable period of six months.

12. In view of the above stated finding of fact, as it appears that impugned action of passing the externment order is a delayed action from the date of issuance of show cause notice dated 7-5-1999 and the delay being inordinate has snapped the live link of alleged antisocial activity of the petitioner and the impugned action resorted to, and as such, order being vitiated cannot be sustained in law.

13. On the basis of the foregoing discussion, the externment order passed by the Deputy Police Commissioner, Traffic Branch, Ahmedabad City, dated 7-5-1999, copy of which is produced at Annexure "B" being invalid is required to be quashed and set aside. Similarly, the appellate order dated 20-8-1999 passed by the Deputy Secretary, Home Department (Special), Sachivalaya, Gandhinagar under Section 60(3) of the Act, copy of which is produced at Annexure "A" having been passed mechanically without considering the object and intent of law also requires to be quashed and set aside.

14. In the result, the petition is allowed. The impugned order of externment passed by the Dy. Commissioner of Police, Traffic Branch, Ahmedabad City dated 7-5-1999 and also the Appellate Order dated 20-8-1999 passed by the Dy. Secretary, Home Department(Special), Sachivalaya Gandhinagar against the petitioner are hereby quashed and set aside. Rule to that extent is made absolute.

(A.K.Trivedi,J,.)

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